

## **IC 12-17.4-2**

### **Chapter 2. General Powers and Duties of the Division**

#### **IC 12-17.4-2-1**

##### **Duties of division**

Sec. 1. The division shall perform the following duties:

- (1) Administer the licensing and monitoring of child caring institutions, foster family homes, group homes, and child placing agencies in accordance with this article.
- (2) Ensure that a criminal history background check of the applicant is completed before issuing a license.
- (3) Provide for the issuance, denial, suspension, and revocation of licenses.
- (4) Cooperate with governing bodies of child caring institutions, foster family homes, group homes, and child placing agencies and their staffs to improve standards of child care.
- (5) Prepare at least biannually a directory of licensees, except for foster family homes, with a description of the program capacity and type of children served that will be distributed to the legislature, licensees, and other interested parties as a public document.
- (6) Deposit all license application fees collected under section 2 of this chapter in the child care fund.

*As added by P.L. 1-1993, SEC. 142. Amended by P.L. 61-1993, SEC. 14.*

#### **IC 12-17.4-2-2**

##### **Powers of division**

Sec. 2. The division may do the following:

- (1) Prescribe forms for reports, statements, notices, and other documents required by this article or by the rules adopted under this article.
- (2) Increase public awareness of this article and the rules adopted under this article by preparing and publishing manuals and guides explaining this article and the rules adopted under this article.
- (3) Facilitate compliance with and enforcement of this article through the publication of materials under subdivision (2).
- (4) Prepare reports and studies to advance the purpose of this article.
- (5) Seek the advice and recommendations of state agencies whose information and knowledge would be of assistance in writing, revising, or monitoring rules developed under this article. These agencies, including the office of the attorney general, state department of health, division of mental health and addiction, bureau of criminal identification and investigation, and fire prevention and building safety commission, shall upon request supply necessary information to the division.
- (6) Make the directory of licensees available to the public for a charge not to exceed the cost of reproducing the directory.
- (7) Charge a reasonable processing fee for each license application and renewal as follows:

(A) For a child caring institution or group home license, a fee not to exceed three dollars (\$3) for each licensed bed based on total licensed bed capacity not to exceed a maximum fee of one hundred fifty dollars (\$150).

(B) For a child placing agency license, a fee not to exceed fifty dollars (\$50).

(8) Exercise any other regulatory and administrative powers necessary to carry out the functions of the division.

*As added by P.L.1-1993, SEC.142. Amended by P.L.215-2001, SEC.53.*

### **IC 12-17.4-2-3**

#### **Foster family home application fee prohibition**

Sec. 3. The division may not charge an application fee for a foster family home.

*As added by P.L.1-1993, SEC.142. Amended by P.L.61-1993, SEC.15.*

### **IC 12-17.4-2-4**

#### **Rules; establishment of standards**

Sec. 4. (a) The division shall adopt rules under IC 4-22-2 concerning the licensing and inspection of child caring institutions, foster family homes, group homes, and child placing agencies after consultation with the following:

- (1) State department of health.
- (2) Fire prevention and building safety commission.
- (3) The board.

(b) The rules adopted under subsection (a) shall be applied by the division and state fire marshal in the licensing and inspection of applicants for a license and licensees under this article.

(c) The rules adopted under IC 4-22-2 must establish minimum standards for the care and treatment of children in a private secure facility.

(d) The rules described in subsection (c) must include standards governing the following:

- (1) Admission criteria.
- (2) General physical and environmental conditions.
- (3) Services and programs to be provided to confined children.
- (4) Procedures for ongoing monitoring and discharge planning.
- (5) Procedures for the care and control of confined persons that are necessary to ensure the health, safety, and treatment of confined children.

(e) The division shall license a facility as a private secure facility if the facility:

- (1) meets the minimum standards required under subsection (c);
- (2) provides a continuum of care and services; and
- (3) is:

(A) licensed under IC 12-17.4-3, IC 12-25, or IC 16-21-2; or

(B) a unit of a facility licensed under IC 12-25 or IC 16-21-2; regardless of the facility's duration of or previous licensure as a child caring institution.

(f) A waiver of the rules may not be granted for treatment and reporting requirements.

*As added by P.L.1-1993, SEC.142. Amended by P.L.61-1993, SEC.16; P.L.161-1995, SEC.1.*

#### **IC 12-17.4-2-5**

##### **Monitoring of licensed entities**

Sec. 5. (a) The division shall monitor the entities licensed under this article for continued compliance with this article and the rules adopted by the division, including conducting the following:

- (1) Onsite inspections, record reading, observation, and interviewing.
- (2) An onsite licensing study at least one (1) time a year in announced or unannounced visits.

(b) The division is entitled to access to the premises, personnel, children in care, and records, including case records, foster care records, personnel files, corporate and fiscal records, and board minutes of the licensee. Access shall also be provided to personnel from other state agencies or other persons who provide inspections at the request of the division.

*As added by P.L.1-1993, SEC.142.*

#### **IC 12-17.4-2-6**

##### **Investigation of complaints**

Sec. 6. The division shall investigate complaints to determine possible noncompliance with the rules adopted by the division. The licensee is entitled to add comments concerning a complaint to the licensing file. The division shall consider all formal complaints against a licensee before a license may be renewed.

*As added by P.L.1-1993, SEC.142.*

#### **IC 12-17.4-2-7**

##### **Child caring institutions and group homes operated by churches and religious ministries**

Sec. 7. (a) Except as provided in subsections (b) and (c), the division shall exempt from licensure a child caring institution and a group home operated by a church or religious ministry that is a religious organization exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11) and that does not:

- (1) accept for care:
  - (A) a child who is a delinquent child under IC 31-37-1-1 or IC 31-37-2-1; or
  - (B) a child who is a child in need of services under IC 31-34-1-1 through IC 31-34-1-9; or
- (2) operate a residential facility that provides child care on a twenty-four (24) hour basis for profit.

(b) The division shall adopt rules under IC 4-22-2 to govern the inspection of a child care institution and a group home operated by a church or religious ministry with regard to sanitation.

(c) The fire prevention and building safety commission shall adopt rules under IC 4-22-2 to govern the inspection of a child care institution and a group home operated by a church or religious ministry

under this section. The rules must provide standards for fire alarms and fire drills.

(d) A child caring institution and a group home operated by a church or religious ministry under this section shall comply with the rules established by the division and the fire prevention and building safety commission under this section.

*As added by P.L.1-1993, SEC.142. Amended by P.L.1-1997, SEC.72.*

#### **IC 12-17.4-2-8**

##### **Granting of variances and waivers**

Sec. 8. (a) The division may grant a variance or waiver of a rule governing child caring institutions, foster family homes, group homes, or child placing agencies. A variance or waiver granted under this section must promote statewide practices and must protect the rights of persons affected by this article.

(b) The division may grant a variance to a rule if an applicant for a license or a licensee under this article does the following:

(1) Submits to the division a written request for the variance in the form and manner specified by the division.

(2) Documents that compliance with an alternative method of compliance approved by the division will not be adverse to the health, safety, or welfare of a child receiving services from the applicant for the variance, as determined by the division.

(c) A variance granted under subsection (b) must be conditioned upon compliance with the alternative method approved by the division. Noncompliance constitutes the violation of a rule of the division and may be the basis for revoking the variance.

(d) The division may grant a waiver of a rule if an applicant for a license or a licensee under this article does the following:

(1) Submits to the division a written request for the waiver in the form and manner specified by the division.

(2) Documents that compliance with the rule specified in the application for the waiver will create an undue hardship on the applicant for the waiver, as determined by the division.

(3) Documents that the applicant for the waiver will be in substantial compliance with the rules adopted by the division after the waiver is granted, as determined by the division.

(4) Documents that noncompliance with the rule specified in the application for a waiver will not be adverse to the health, safety, or welfare of a child receiving services from the applicant for the waiver, as determined by the division.

(e) Except for a variance or waiver of a rule governing foster family homes, a variance or waiver of a rule under this section that conflicts with a building rule or fire safety rule adopted by the fire prevention and building safety commission is not effective until the variance or waiver is approved by the fire prevention and building safety commission.

*As added by P.L.1-1993, SEC.142. Amended by P.L.61-1993, SEC.17; P.L.2-1995, SEC.54.*

#### **IC 12-17.4-2-9**

### **Expiration of variances and waivers**

Sec. 9. A waiver or variance granted under section 8 of this chapter and a waiver or variance renewed under section 10 of this chapter expires on the earlier of the following:

- (1) The date when the license affected by the waiver or variance expires.
- (2) The date set by the division for the expiration of the waiver or variance.
- (3) The occurrence of the event set by the division for the expiration of the waiver or variance.
- (4) Two (2) years after the date that the waiver or variance becomes effective.

*As added by P.L.1-1993, SEC.142.*

### **IC 12-17.4-2-10**

#### **Renewal of variances and waivers**

Sec. 10. (a) If the division determines that a waiver or variance expiring under section 9 of this chapter will continue to serve the public interest, the division may do the following:

- (1) Renew the waiver or variance without modifications.
- (2) Renew and modify the waiver or variance as needed to promote statewide practices and to protect the rights of persons affected by this chapter.

(b) Before taking an action under subsection (a), the division may require a licensee under this article to do the following:

- (1) Apply for the renewal of a waiver or variance on the form specified by the division.
- (2) Provide the information required by the division.

(c) Except for a variance or waiver of a rule governing foster family homes, before taking an action under subsection (a), the division must obtain the approval of the fire prevention and building safety commission for the action if either of the following occurs:

- (1) The fire prevention and building safety commission substantially changes a building rule or fire safety rule affected by the waiver or variance after the date the commission last approved the waiver or variance.
- (2) The division substantially modifies any part of a waiver or variance that conflicts with a building rule or fire safety rule adopted by the fire prevention and building safety commission.

*As added by P.L.1-1993, SEC.142. Amended by P.L.61-1993, SEC.18; P.L.1-1994, SEC.64.*

### **IC 12-17.4-2-11**

#### **Revocation of variances and waivers**

Sec. 11. (a) If a licensee under this article violates a condition of a waiver or variance under this chapter, the division may issue an order revoking the waiver or variance before the waiver or variance expires under section 9 of this chapter.

(b) If a waiver or variance is revoked under subsection (a), the licensee is entitled to notice and an opportunity for a hearing as provided under this article.

*As added by P.L.1-1993, SEC.142.*